IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPLICATION NO. 505 OF 2005
(FOR LEAVE TO APPEAL)

State of Maharashtra. ..Applicant.

Vs.

Laxman Bhajandas Babar .. Respondent.

Ms.Usha Kejariwal, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 31st January, 2005

P.C.

Heard Ms.Usha Kejariwal, the learned Additional Public Prosecutor.

2. The learned Ad-hoc Additional Sessions Judge, Solapur considered the evidence of prosecution and observed thus-

> "17. Surprisingly one may find that the evidence of material witnesses is not only contradictory and inconsistent to each other it is not concerting to the allegations mentioned in the F.I.R. and that the evidence is absolutely not inspiring confidence of the court. To repeat it is mentioned in the F.I.R. that there was knife with accused No.1, axe with accused No.2 and stick with accused No.3. It is also alleged that while beating with axe the accused No.2 had tooth bite on the chest and right arm of the complainant. But in the same F.I.R. it is mentioned that the accused No.1 was bearing to his son Prashant by whip. It is therefore not explained as to how the accused was beating by whip at the same used knife. Secondly, it is also not explained as to how the accused was beating by axe at the same time causing tooth bite injuries.

18. While appreciating one may find from the evidence of Pratap PW-4 that he has stated that the accused No.2 and 3 both were beating by axes to him and accused No.3 by stick. There was knife with accused No.1 and all of them beat him by those weapons on his head and right arm. But the medical evidence on record is quite inconsistent to those allegations. It is not certified that there were any injuries caused by tooth bite on chest and right arm of PW-4. If all those persons were assaulting to PW-4 by all those weapons at the same time there was dafiritely a probability of causing number of injuries all over his body. It, therefore, shows that the witness has made attempt to improve the case in the witness box departing from the truthful version of the incident.

19. Secondly PW-6 has also departed from the truthfulness stating that the accused No.1 has given 3 blows of axe on his head and there was blows of whip given by the accused No.1 and blows of stick by accused No.3. In this connection also the medical evidence is inconsistent to the allegations and the same cannot be accepted as it is.

20. The seizure of muddemal articles is shown in such a fashion that all the accused persons were readily present with the weapons used by them on the spot till 16.7.2002 with a view to produce the same before the police. This appears to be quite improbable and the story as introduced by the prosecution does not inspire the confidence of the court wherein such evidence is put forth in a case of suppression of material facts regarding the injuries caused to the father of the accused and the complaint lodged by him I find that the prosecution is not free from reasonable doubt. In the result, benefit of doubt goes to the accused and the conviction of accused even for the offences punishable under Sec. 324 and 323 cannot be safely recorded. In the result, therefore those two points are also answered in the negative and following order is passed."

3. The learned APP could not show any infirmity in consideration of the matter by the trial Judge.

4. No case for grant of leave to appeal against the judgment of acquittal is made out.

5. Criminal application for leave to appeal is, accordingly, rejected.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)